

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 6

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an outside contractor (Shurigar Construction Company) to load, haul, unload and grade fill material to build a berm and roadbed at approximately Mile Post 58.07 near North Bend, Nebraska beginning June 8, 1992 and continuing (System File R-33/920499).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intention to contract out said work and make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
3. As consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Roadway Equipment Operators D. J. Kobza, R. L. Wehrer, T. L. Reikofski and Nebraska Division Truck Drivers B. J. Erickson, J. E. Mumm and L. H. Wilson shall each be allowed pay at their respective rates of pay for an equal proportionate share of all straight time and overtime man-hours expended by the outside forces beginning June 8, 1992 and continuing until the violation ceases to exist.

FINDINGS:

On June 4, 1992, the Carrier notified the Organization of its intent to use an outside contractor to grade and compact the roadway in preparation of building a berm and roadbed at Mile Post 58.07 in the general vicinity of North Bend, Nebraska. After an exchange of correspondence between the parties, a conference was held on June 22, 1992, to discuss the issue of hiring an outside contractor to perform work that the

Organization contended had been customarily performed by BMW employees.

According to the Organization, work at Mile Post 58.07 began on June 8, 1992, before the conference was held.

The Organization filed the instant claim on behalf of Claimants Kobza, Wehrer, Reikofski, Erickson, Mumm, and Wilson arguing that the Claimants were available and capable of performing the work in question. The Organization also argued that it was not afforded the opportunity to discuss this issue prior to the commencement of work by contractor.

The Carrier contends that it did not have sufficient equipment and manpower to perform the project expeditiously. The Carrier also contends that the actual work was performed between June 27, 1992 and July 21, 1992.

The parties not being able to resolve the issues, this matter came before this Board.

This Board has reviewed the extensive record in this case and we find that the Carrier first notified the Organization of its intent to subcontract the work involved at Mile Post 58.07 on June 1, 1992. The Carrier advised the Organization that the work would cover grading and culvert work including the importing of fill and the construction of a shoo-fly on the south side of the main lines, as well as to install 372 inch pipes to facilitate new bridge construction. The Carrier invited the Organization to discuss the notice within the next 15 days in accordance with Rule 52.

The Organization responded to the Carrier's notice on June 8, 1992, objecting to the subcontracting work for the usual reasons. The Carrier replied to the Organization's

response on June 17, 1992, and a conference was held on June 22, 1992, to discuss the work.

The Carrier has presented a great deal of evidence to support its position that this is the type of work that it has subcontracted in the past. The Organization argues that the work in this case began on June 8, 1992, and the conference was not held until two weeks later.

The Carrier has submitted evidence by way of a memorandum dated November 30, 1992 from Shurigar Dirt Contracting, Inc. of Kenesaw, Nebraska which supports the Carrier's position that the work performed at Mile Post 58.07 took place between June 22 and July 11, 1992. In that memorandum from Gary E. Shurigar, it is stated:

The project located at Mile Post 58.07 near Rogers, Nebraska Council Subdivision. Building the berm and grade for the shoo-fly started on June 22 through July 11. The man-hours for the job were 970 hours based on five men and one superintendent. The time before June 22, 1992 our company hauled gravel for the Bridge Department.

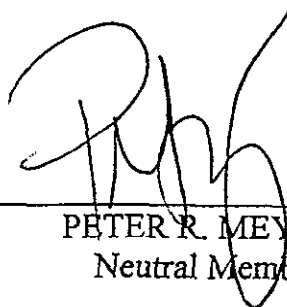
Although the Organization alleges that the work began before the conference on June 22, 1992, it has supplied insufficient evidence to rebut the Carrier's evidence that the work took place after the conference.

The Carrier has shown that the type of work performed by the subcontractors has previously been performed by outside contractors for the Carrier in the past. The Carrier has also demonstrated that Carrier forces and equipment were not sufficient for the project and that it had a right under the rules to subcontract the work involved.

Therefore, the claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier MemberDATED: 9/23/94

Organization MemberDATED: 9-30-94